BQC - 91 – 025

Date: May 1, 1991

To: Hospice Agencies Hspce 5

From: Larry Tainter, Director
Bureau of Quality Assurance

Subject: Hospice Program Discharge Requirements

The Bureau of Quality Compliance has received Program Letter No. 91-02 from the Health Care Financing Administration answering questions raised regarding hospice discharge requirements. In order to keep you informed of HCFA's interpretation of these requirements, a copy of their question-and-answer program letter is enclosed.

Please contact Allan Stegemann, Chief, Facilities Regulation Section, at (608) 266-2055 if you have any questions.

LT:BH:bc 7358

cc: -BQC Staff
-Office of Legal Counsel
-George F. MacKenzie, DOH Admin.
-Kevin Piper, BHCF Dir.
-HCFA, Region V
-Illinois State Agency
-Ohio State Agency
-Michigan State Agency
-Indiana State Agency
-Minnesota State Agency
-WI Coalition for Advocacy
-Service Employees International Union
-WI Counties Assn.
-WI Medical Records Assn. Cons. Committee
-WI Assoc. of Homes and Services for Aging
-Comm. on Aging, Ext. Care Fac./HH (SMS)
-WI Assn. Nursing Homes
-WI Assn. of Medical Directors
-Hospice Organization of WI

Department of Health & Human Services
Health Care Financing Administration
Region V
105 West Adams Street
15th Floor
Chicago, Illinois 60603-6201

Refer to: CR2

JANUARY 1991

DIVISION OF HEALTH STANDARDS AND QUALITY REGIONAL LETTER No. 91-02

Subject: Hospice Program Discharge Requirements

The following are responses from our Central Office to questions regarding the Medicare Hospice Benefit and Program Discharge Requirements:

1. **How does 42 CFR 418.22 apply to hospice patients that are no longer considered to be terminal.**

   Section 418.22 is a condition of Medicare hospice eligibility which requires the hospice to obtain certification that the patient is terminally ill. The certification must be signed by either the medical director of the hospice or the physician member of the interdisciplinary group. If the patient is not recertified as being terminal, then they are no longer eligible for coverage of services under the Medicare hospice benefit. As stated in the Medicare hospice manual at section 210, the "hospice benefit is available only to individuals who are terminally ill and so a hospice may discharge a patient if it discovers that the patient is not terminally ill." In this circumstance the patient resumes the eligibility for Medicare coverage of services that was waived when hospice care was elected (including SNF, hospital, and home health services). The hospice has no responsibility for the provision of services to a patient who has been discharged.

2. **Can a hospice discharge a patient from the program because the primary care giver is no longer available to the patient, if the hospice's policies and procedures indicate that a care giver is mandatory for acceptance in the program?**

   No. Section 418.50 of the hospice conditions of participation (COP) require the hospice to make such covered services available as are necessary for the palliation and management of the patient's terminal illness or related conditions. This means that the hospice is obligated to furnish those covered services that are needed by the terminal patients that they have accepted for care. The loss of care giver is insufficient grounds for the discharge of a patient, regardless of the hospice's internal policies. If the hospice anticipates that it will not be able to see to the needs of a patient, then it should refrain from admitting that patient into its program.

3. **Can a hospice discharge a patient to a nursing home or other program for other than monetary reasons without the consent of the patient?**

   A hospice may only discharge a patient if the patient's illness is no longer considered to be terminal or if the patient moves out of the hospice's service area (see section 210 of the Medicare Hospice Manual). A hospice may not discharge a patient to a nursing home in circumstances other than these. A patient is

free to revoke voluntarily his or her election of the hospice benefit at any time. After revocation, a patient will receive normal Medicare coverage of services (such as SNF services).

4. **What services are available when a patient has outlived the (Medicare) hospice benefits and is still in need of hospice services? Under what circumstances can a hospice charge the patient for its services or discharge the patient? Is the hospice obligated to provide service in perpetuity?**

   As mentioned above, a hospice may only discharge a patient if the patient's illness is no longer considered to be terminal or if the patient moves out of the hospice's service area. A hospice is obligated to furnish the covered services needed for the palliation and management of a patient's terminal illness for as long as the patient chooses to remain in the care of the hospice. The Medicare hospice COP at section 418.60 state that "a hospice may not discontinue or diminish care provided to a Medicare beneficiary because of the beneficiary's inability to pay for that care." Although the hospice may not discharge a beneficiary solely because of an inability to pay, a hospice is not precluded from pursuing payment for services (after Medicare benefits have been exhausted) either from other insurers or from the patient if he or she is financially able to pay. I would like to note that OBRA 1990 has revised the Medicare hospice benefit to include a fourth unlimited benefit period as an extension of the third benefit period when a patient's terminal condition is recertified after the expiration of the third period. This revision should greatly assist in alleviating the financial hardship experienced by hospices serving indigent beneficiaries that have exhausted their Medicare hospice coverage.

If you have any questions regarding these clarifications, please contact Sally Jo Wieling at (312) 353-8853 or Gwendolyn Michel at (312) 886-5211.

/s/ Charles Bennett
Acting Associate Regional Administrator
Division of Health Standards & Quality